IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

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THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION No.12369 of 1999

Titan Industries Limited,
rep., by its Vice President-Corporate
Affairs, No.3, Sipcot Industrial
Complex, HOSUR 635 126,
TAMIL NADU ..... Petitioner

-Vs-

1.The Additional Commissioner of
Customs, Air Cargo Complex,
Meenambakkam,
Chennai-600 027.

2.The Commissioner of Customs,
Air Cargo Complex,
Meenambakkam,
Chennai-600 027. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Mandamus for the reasons stated therein.

For Petitioners :: Mr.Sriram Panchu, Senior
Counsel for Mr.T.Mohan

For Respondents :: Mr.J.Madanagopal Rao,
S.C.G.S.C.

:O R D E R

Heard the learned counsel appearing for the parties.

2. This writ petition is for the issuance of a Writ of
Mandamus directing the first respondent to release the bank guarantee
furnished by the petitioner in respect of imports made against the Value Based
Advance Licences as sought for in their letter dated 17.3.1999.

3. The petitioner is a manufacturer of quartz analog watches
and is an exporter of the same, has imported several items as per the Export
Import Policy 1992-97. The petitioner had obtained the Value Based Advance

licence (hereinafter referred to as "VABAL" in short) for the export of watches and import of components. The petitioner imported certain items against the export already made. At this stage, the Customs authorities had entertained a doubt regarding the valuation of the import and after lot of correspondences, they permitted release of the consignment on furnishing of bank guarantee during the period 19.5.1998 to 9.1.1999. Certain doubts having crept up, the first respondent had correspondence with the Joint Director General of Foreign Trade (R2), who clarified that there was nothing amiss in the import dated 21.4.1998 and the goods can be released on taking an undertaking. On the basis of such letter, the petitioner made several representations for return of the bank guarantee. Since the matter remained pending, the present writ petition has been filed.

4. A counter affidavit has been filed on behalf of the first respondent wherein it is indicated that the first respondent has taken action in accordance with paragraph 109D of the policy and the matter is still under consideration, as several correspondences have been made with the Director General of Foreign Trade but a categorical reply of the first respondent is yet to be received.

5. There is no dispute that import of the items fall under the Special Scheme. The materials on record indicate that in respect of electronic goods, there can be special scheme and as per the licence granted, the materials have been imported. As a matter of fact, the Joint Director General of Foreign Trade in the clarification has indicated that there was nothing amiss in the import.

6. In such view of the matter, there is no justification for the first respondent to withhold the bank guarantees, which should have been returned. The learned counsel for the petitioner in this connection has relied upon the decision in SALEM STAINLESS STEEL SUPPLIERS vs. COMMISSIONER OF CUS., MADRAS (1999 (106) E.L.T. 303 (Mad.), wherein it was observed as follows:-

"I carefully considered the contention of both the counsel. The petitioner is only a purchaser of the import licence from the original licensee. The original importer has imported the material goods as per the original licence and complied with the obligation of the export. In the original licence there is no specification of the thickness of the goods to be imported. When the licence is coupled with the obligation of export, then the exporting material should be in conformity with the material imported. In this case, the original licensee admittedly has discharged the export obligation and obtained a discharge endorsement and sold the licence. When once the obligation of export contemplated in the original licence had been discharged and the discharge endorsement has been made, thereafter the original licensee can import the materials with obligation to export or transfer the licence to third parties after the licence is endorsed about the exportdischarge certificate. The nexus need not be established because the nexus would arise only when the obligation of export exists. The petitioners, as purchasers of the licence after the discharge of the obligation of exports, are not bound to establish the nexus."

7. Similar view has been expressed in a Division Bench decision of this Court in UNION OF INDIA vs. OCEANIC EXPORT CORPORATION (2000 (11 6) E.L.T.19 (Mad.).

8. From the aforesaid decisions, it becomes clear that once export obligation has been met, it is not for the customs authority to insist for the nexus in respect of matters coming under this special scheme. If any import is in contravention of the licence, it is for the licensing authorities to take action and not for the customs authorities. It is stated by the first respondent that the customs authorities have already made correspondence in the matter with the licencing authorities. Therefore, it is for the licensing authorities to take action, if it is so required under the law. But the customs authority cannot refuse to release the bank guarantee merely because the matter is under correspondence with the licensing authorities.

9. For the aforesaid reasons, the writ petition is allowed and a direction is issued to the first respondent to release the bank guarantee. This order will not stand in the way of the appropriate authorities taking any appropriate action in accordance with law. In result, the bank guarantee may be released within a period of 60 days from the date of receipt of a copy of this order. No costs.

Index : Yes.
Internet: Yes.

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To
1.The Additional Commissioner of
Customs, Air Cargo Complex,
Meenambakkam,
Chennai-600 027.

2.The Commissioner of Customs,
Air Cargo Complex,
Meenambakkam,
Chennai-600 027.

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